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**(1985) 01 CAL CK 0022**  
**In the Calcutta High Court**  
**Case No : Matter No. 7 of 1984**

Saroj Kumar Maheswari

APPELLANT

Vs

Hindusthan Motors Ltd. and Another

RESPONDENT

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**Date of Decision :** 18-01-1985

**Acts Referred:**

Income Tax Act, 1961 — Section 192, 243, 244

**Citation :** (1985) 49 CTR 9 : (1985) 154 ITR 363 : (1986) 28 TAXMAN 12

**Hon'ble Judges :** Dipak Kumar Sen, J;Ajit K. Sengupta, J

**Bench :** Division Bench

**Advocate :** A.P. Chatterjee, for the Appellant; M. Mukharjee, for the Respondent

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## Judgement

Ajit K. Sengupta, J.—The appellant-petitioner, Saroj Kumar Maheswari, was employed as Assistant Development Engineer in Hindusthan Motors Limited (hereinafter referred to as the "respondent company"). The services of the petitioner were terminated with effect from June, 1970, under the service rules of the respondent company. The petitioner being aggrieved by the said order of termination made an application u/s 33A of the Industrial Disputes Act, 1947, before the 4th Industrial Tribunal. The Tribunal by an award dated August 17, 1974, set aside the order of termination of the services of the petitioner and directed his reinstatement with half back wages from the date of termination up to the date of the order of the Tribunal.

2. The respondent company thereafter filed an application under Article 226 of the Constitution of India for setting aside the said award whereupon rule nisi was issued and operation of the said award was stayed. By judgment and order dated September 16, 1976, Amiya Kumar Mukherjee J. discharged the rule nisi. The respondent company, thereafter, filed an appeal against the said order dated September 16, 1976, and the said appeal was also dismissed by the judgment and order dated November 30, 1979.

3. The respondent company, thereafter, filed a SLP before the Supreme Court of

India in January, 1980. During the pendency of the said petition, the respondent company and the petitioner entered into a compromise on the basis whereof the Supreme Court passed the following order on February 14, 1980.

"CONSENT TERMS

4. Special Leave granted, Appeal is disposed of in the following terms :

1. Respondent No. 2, Shri Saroj Kumar Maheswari, having categorically intimated his resignation from the service of the appellant with effect from today, the appellant do pay to respondent No. 2, saroj Kumar Maheswari, a sum of Rs. 1,50,000 (Rupees one lakh and fifty thousand only) in full and final settlement of all his claims, in respect of wages, provident fund, gratuity and all other emoluments and dues either under the impugned judgment otherwise from June 9, 1970, up to date within four weeks from today.

2. In addition to the aforesaid sum of Rs. 1,50,000, the appellant will pay to respondent No. 1, Mr. Saroj Kumar Maheswari, any amount which might be due and payable to him in law for the period prior to June 8, 1970, including provident fund lying to his credit.

3. These consent terms will be substituted for the judgment of the High Court of Calcutta dated November 30, 1979, in Original Order No. 56 of 1977."

5. The respondent company instead of making payment of Rs. 1,50,000 to the petitioner in terms of the said consent order paid the following amounts to the petitioner :

Date of payment Amount

Rs.

7th March, 1980 61,706.40

14th March, 1980 5,494.00

6. A sum of Rs. 78,279 was deducted as tax on the said sum of Rs. 1,50,000 and paid to the Income Tax Department on account of the petitioner. Thus a sum of Rs. 1,45,479.40 in the aggregate was paid to the petitioner and/or deemed to have been paid on account of the petitioner. The remaining sum of Rs. 4,520<sup>60</sup> was deducted as alleged licence fee for occupation of quarters and on account of electricity charges for the period June, 1970, to February, 1980.

7. Since the petitioner received from the respondent company only a sum of Rs. 67,200-40 in March, 1980, as against the said sum of Rs. 1,50,000 thus leaving a balance sum of Rs. 82,799.60, the petitioner demanded the said balance amount from the respondent company. The respondent company did not pay the, said amount and, accordingly, the petitioner filed an application u/s 33(C)(1) of the Industrial Disputes Act, 1947, to the Secretary, Labour Department, Government of West Bengal, A certificate was issued on June 18, 1983, to the Chief Metropolitan Magistrate, Calcutta, for recovery of the said sum of Rs.

82,799.60 from the respondent company. Thereafter, the Deputy Labour Commissioner filed a complaint on June 20, 1980, before the learned Metropolitan Magistrate, 16th Court, against the respondent company for non-payment of the said sum of Rs. 82,799-60. The learned Metropolitan Magistrate, 16th Court, by an order dated July 1, 1983, issued distress warrant for realisation of the said sum of Rs. 82,799.60 from the respondent company u/s 18 of the Industrial Disputes Act, 1947. Thereupon, the respondent company filed an application under Article 226 of the Constitution for quashing the said proceeding pending before the learned Metropolitan Magistrate, 16th Court, Calcutta, and obtained an interim order on January 12, 1984. The said writ application (Matter No. 7 of 1984) came up for final hearing before Padma Khastgir J. on July 27, 1984. The learned judge in disposing the said writ application has, inter alia, held as follows :

"The employer and the employee entered into an agreement where the employee gave up all his claims in dispute and agreed to the terms of settlement and the figure arrived at was Rs. 1,50,000 towards the dues arising out of various claims. Under the circumstances, whatever amount had been awarded by the Supreme Court is payable to him without deduction.

As a result, the company was not entitled to deduct Income Tax at source. To pass an order which would be beneficial for both the company and Mr. Maheswari, this court enquired from Dr. Mookerjee as to whether the company was agreeable to pay the entire amount under the Supreme Court order to Mr. Maheswari without deduction to which he submitted that the company had already deposited the amount with the Income Tax authority. Under the circumstances, this court directed the Income Tax authority to refund the said sum to the company with interest for the purpose of making payment to Mr. Maheswari. In view of the submissions made on behalf of the parties, this court is of the view that the company was under no obligation to deduct the amount of Income Tax from the said sum of Rs. 1,50,000 which has been directed by the Supreme Court to be paid to the judgment-creditor. Under the circumstances, non-deduction of Income Tax from the said sum would not attach any liability to the company. If, however, any Income Tax is payable in respect of the said amount directed to be paid by the Supreme Court, such amount will be assessed by the Income Tax Department in accordance with law. The Income Tax Department is directed to refund this amount within a period of three months from the date of communication of this order, which will be communicated by Mr. Maheswari to the Income Tax Department. The rule is made absolute and disposed of accordingly. It is recorded that receipt of such deposit had been handed over to Mr. Maheswari."

8. This appeal has been preferred by the petitioner against the said judgment and order dated July 27, 1984, of Padma Khastgir J. An application has also been made for stay of operation of the said judgment and order under appeal. When the stay application was moved, it was contended on behalf of the appellant that

the learned judge should have directed the respondent company to pay Rs. 82,799.60 which was due and payable to the petitioner by the respondent company. It was thereafter submitted that the Income Tax Department had refunded a sum of Rs. 62,422 on August 9, 1983. Mr. Arun Prakash Chatterjee, senior standing counsel appearing for the petitioner, has produced the Income Tax assessment order dated July 27, 1983, as well as a xerox copy of the refund voucher. It appears that the ITO treated the entire sum of Rs. 1,50,000 directed to be paid by the Supreme Court in respect of wages, provident fund, gratuity and all other emoluments and dues as salary, and after giving relief u/s 89(1) of the I.T. Act, 1961, completed the assessment for the assessment year 1980-81. Upon such assessment, a sum of Rs. 62,422 became refundable to the petitioner which was refunded on August 9, 1983. It thus appears that out of Rs. 1,50,000, the petitioner received in his hands a sum of Rs. 67,200.40 from the respondent company in March, 1980, and a sum of Rs. 62,422 was received as refund from the Income Tax Department on August 9, 1983. The petitioner, therefore, received actually Rs. 1,29,622 40 in the aggregate leaving a balance of Rs. 20,377.60. Mr. Chatterjee has submitted that the respondent company should not have deducted any tax from the sum of Rs. 1,50,000 and should have paid the entire sum of Rs. 1,50,000 to the petitioner without any deduction. Mr. Chatterjee has submitted that the said sum of Rs. 1,50,000 is not taxable at all in view of the judgment of the Supreme Court in the case of All India Reporter Ltd., Nagpur Vs. Ramachandra Dhondo Datar, . In that case, the Supreme Court held that in the execution of a decree passed in favour of an ex-employee, for compensation for wrongful termination of employment, arrears of salary, salary due for the period of notice, interest and costs, less the withdrawals on salary account, the substantial part of the decree representing compensation for wrongful termination of employment, it being difficult to predicate which part of the decree represented salary due, in the absence of a provision in the decree for payment of Income Tax due by the decree-holder, the employer judgment-debtor cannot claim to deduct u/s 18, the Income Tax payable by the decree-holder upon the amount. Granting that compensation payable to an employee by an employer for wrongful termination of employment can be regarded as in the nature of salary, when the claim is merged in the decree of the court, the claim assumes the character of a judgment-debt and to judgment-debts Section 18 has not been made applicable.

9. The further contention of the learned senior standing counsel is that since the respondent company withheld Rs. 82,799"60 to the petitioner, the respondent company is liable to pay interest. The petitioner is also entitled to interest in respect of the balance amount of Rs. 20,377"60 which shall remain due and payable by the respondent company after the petitioner received the refund of Rs. 62,422 from the Income Tax Department. He has also submitted that the petitioner is entitled to compensatory costs. In support of his contention that the petitioner is entitled to interest and compensatory costs, Mr. Chatterjee relied on a judgment of the Supreme Court in the case of Mahendra Singh Dhantwal Vs.

Hindustan Motors Ltd., . At page 69, the Supreme Court observed as follows :

" The operative order of the judgment of this court clearly spells out the responsibility of the respondent to pay Rs. 20,000 without any deduction therefrom to the appellant. The respondent while implementing the judgment of this court deducted Rs. 2,145 from the amount of Rs. 20,000 directed to be paid to the appellant on the ground that as the amount was being paid as back-wages, the employer was under an obligation to deduct the Income Tax payable at source. ....The second reason is that the court desired that Rs. 20,000 lump sum be paid to the appellant which means that if there arises any liability to pay tax, the same shall be borne by the company. That was the intendmen.t of the order of this court. Therefore, it must be held that the respondent-company was not justified in deducting Rs. 2,145 from the compensation amount of Rs. 20,000 awarded by this court to the appellant. The respondent-company is, accordingly, directed to pay Rs. 2,145 with 15% interest from May 7, 1976, till payment."

10. At page 71, the Supreme Court observed as follows :

"As the appellant has been kept on tenterhooks for the last nearly eight years, we direct the respondent to pay Rs. 2,000 as and by way of costs."

11. It has been contended by Dr. Monotosh Mukherjee for the respondent company that the company under a bona fide impression deducted taxes at source from the sum of Rs. 1,50,000. He has submitted that the fact of getting the refund from the Income Tax Department was not disclosed before the court of the first instance nor before this court. Had it been disclosed before the court of the first instance, in that event, the order directing the Income Tax Department to make the refund would not have been passed. The petitioner is guilty of suppression of material facts. He has further submitted that the question of payment of interest does not arise as the facts in the case relied on by the petitioner are different. In any event, the petitioner can only ask for interest on the sum of Rs. 20,377.60 which has not yet been paid after adjustment of the amounts due to the company from the petitioner.

12. We have considered the rival submissions. It is true that the petitioner is guilty of suppression of material fact. The petitioner ought to have disclosed the fact of his having obtained a refund from the Income Tax Department. The learned judge directed the Income Tax Department to refund the amount deposited by the respondent company as tax deducted at source with interest. The respondent company should have paid the entire amount of Rs. 1,50,000 without any deduction. The consent order passed by the Supreme Court would clearly indicate that the entire sum of Rs. 1,50,000 was required to be paid by the respondent company to the petitioner without any deduction whatsoever. It cannot be accepted that the respondent company under a bona fide impression deducted tax at source. The said sum of Rs. 1,50,000 comprised of wages, provident fund, gratuity, other emoluments and dues and as such the respondent company without making any allocation of the different items should not have

deducted tax at source before making the payment of Rs. 1,50,000 treating the entire amount as salary. Section 192 of the I.T. Act, 1961, provides that any person responsible for paying any Income Tax chargeable under the head "Salaries" shall, at the time of payment, deduct Income Tax on the amount payable at the average rate of Income Tax computed on the basis of the rates in force for the financial year in which the payment is made. It is crystal clear that the entire sum of Rs. 1,50,000 could not be salary income of the petitioner. The respondent company, therefore, should not have deducted the sum of Rs. 78,279 at source and deposited it with the Income Tax Department. The deduction is made u/s 192 when an amount is paid which is taxable under the head "Salaries". In view of the judgment of the Supreme Court in *All India Reporter Ltd., Nagpur Vs. Ramachandra Dhondo Datar*, , the entire sum of Rs. 1,50,000 may not be assessable as salary. We are also of the view that the respondent company should not have deducted the sum of Rs. 4,538 as and by way of licence fee for occupation of quarters and on account of electricity charges for the period from June, 1970, to February, 1980. The consent order did not provide that the respondent company before making the payment of Rs. 1,50,000 would be entitled to deduct any amount on any account whatsoever.

13. The learned judge should not have given any direction to the Income Tax Department to refund the amount deducted by the respondent company from the sum of Rs. 1,50,000 and paid to the Income Tax Department, inasmuch as the Income Tax Department was not a party to the writ application filed by the respondent company. Unless there is a determination by the Income Tax authorities that the sum of Rs. 1,50,000 or any part thereof is not taxable at all, no question of refund of any amount out of the alleged tax paid to the Income Tax Department would arise. There must be some determination by the Income Tax Authority either upon the application of the respondent company who deducted the alleged tax at source from the sum of Rs. 1,50,000 or at the instance of the petitioner upon completion of the assessment inasmuch as tax deducted shall, for the purpose of computing the income of the petitioner, be deemed to be the income received. The learned judge also fell into an error in directing the Income Tax Department to pay interest. The said direction is also contrary to the provisions of the I.T. Act. Under the circumstances mentioned in Sections 243 and 244 of the I.T. Act, 1961, the Income Tax Department is liable to pay interest on delayed refund. Unless there is any liability to refund which has been delayed, the question of payment of interest would not arise at all. On the facts and in the circumstances as appearing from the records of the court of the first instance, the learned judge should not have directed the Income Tax Department to pay interest as there was no liability on the Income Tax Department to pay any interest on the sum which was deducted by the respondent company and deposited with the Income Tax Department. As a matter of fact, the Income Tax Department completed the assessment of the petitioner on July 27, 1983, and refunded the sum of Rs. 63,442 out of the sum of Rs. 78,279 upon completion of the assessment of the petitioner for the

assessment year 1980-81.

14. It appears that the petitioner was paid only a sum of Rs. 61,706.40 + Rs. 5,494 in March, 1980. Thus a sum of Rs. 82,799.60 remained due and payable by the respondent company. We cannot take into account the sum which was paid by the respondent company to the Income Tax Department on account of alleged tax. Therefore, the petitioner would be entitled to interest on the said sum of Rs. 82,799.60 from April 1, 1980, to August 9, 1983, the date when the petitioner obtained refund of a sum of Rs. 62,422 from the Income Tax Department. The respondent company shall pay interest on the said sum of Rs. 82,799.60 at the rate of 12% (which is the rate at which the Income Tax Department pays interest on delayed refund). After the petitioner obtained the sum of Rs. 62,422 from the Income Tax Department on August 9, 1983, a sum of Rs. 20,377.60 still remained due and payable by the respondent company. There is no explanation for withholding the said sum of Rs. 20,377.60. The respondent company, therefore, shall pay interest on the said sum of Rs. 20,377.60 from August 10, 1983, till the date of payment. As indicated earlier, the petitioner was successful before the Tribunal. The respondent company moved this court under Article 226 of the Constitution and failed. The Division Bench dismissed the appeal of the respondent company. In the Supreme Court, consent order was passed. The respondent company did not pay the amount as directed by the Supreme Court. Thereafter the petitioner had to initiate proceedings under the Industrial Disputes Act and when the distress warrant was issued, the respondent company again came before this court challenging the proceedings pending in the Court of Metropolitan Magistrate.

15. The respondent company is, therefore, liable to pay costs to the petitioner but having regard to the conduct of the petitioner in not disclosing true and correct facts in the court below, we are not inclined to award any costs or compensatory costs to the petitioner. Having regard to the conduct of the parties, we are of the view that neither the petitioner shall be entitled to any costs nor the respondent company shall be entitled to deduct any sum on account of licence fee for occupation of the quarter or on account of electricity charges.

16. The respondent-company is directed to pay the sum of Rs. 20,377.60 to the petitioner along with interest as directed by the order within four weeks from today. The proceedings impugned under Article 226 of the Constitution by the respondent-company would remain stayed for a period of five weeks. In the event the respondent-company makes payment as directed within the time specified above, the petitioner or the respondent-company or the appropriate authority shall make necessary petition before the Metropolitan Magistrate, 16th Court, for filing of the case and upon such petition being made, the Metropolitan Magistrate, 16th Court, Calcutta, shall dispose of the case accordingly. In default of payment of interest on the sum of Rs. 20,377.60 as directed by this order, the Metropolitan Magistrate, 16th Court, Calcutta, shall proceed with the pending

proceedings for recovery of the amounts as specified in this order. This order will not prejudice the rights of the parties, if any, to urge before the Income Tax authorities in the appropriate proceedings that the sum of Rs. 1,50,000 or any part thereof is not assessable to tax at all. It is recorded that the respondent-company which has not used any affidavit-in-opposition in this court does not admit the allegations made in the stay petition.

17. There will be no order as to costs.

18. This order virtually disposes of the appeal. By consent of the parties, the appeal is treated as on day's list. The respondent-company who is the main respondent waives service of the notice of appeal. Notice of appeal on other non-appearing respondents is dispensed with. Filing of paper book is dispensed with. Undertaking will stand discharged. The appeal is disposed of on the above terms.

19. All parties to act on a signed copy of the minutes of the operative portion of this order.

Dipak Kumar Sen, J.

20. I agree.